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Restorative Paradigm in Jinayah Law: Reconstructing Islamic Penal Ethics in the Framework of Contemporary Social Justice

Paradigma Restoratif dalam Hukum Jinayah: Rekonstruksi Etika Pidana Islam dalam Bingkai Keadilan Sosial Kontemporer

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ABSTRACT

The paradigm of criminal law in Islamic tradition has often been understood in a retributive and textual manner, leading to tensions when confronted with demands for social justice and human rights in the contemporary era. This study aims to reconstruct Islamic penal ethics through a restorative approach that is more relevant to modern social dynamics, without compromising the authenticity of Sharia law. Using a qualitative method based on a critical literature review of primary sources of *fiqh*, *maqashid al-shari'ah*, and contemporary legal literature, this study produced three main findings: first, Islamic penal ethics are normatively comprehensive and dynamic, allowing for a restorative approach through the values of *islah*, *'afw*, and *rahmah*; second, the reconstruction of *hudud*, *qishash*, and *ta'zir* laws shows that there is legal and moral space for non-retributive resolutions such as mediation, forgiveness, and rehabilitation; and third, the application of the restorative model can integrate Islamic social justice values with human rights principles by involving civil society and addressing the structural roots of crime such as poverty and social exclusion. These findings underscore the urgency of reforming Islamic criminal law to be more humane, inclusive, and transformative within the framework of contemporary social justice.

Keywords : Restorative Paradigm; Ethic; Islamic Penal; Social Justice

ABSTRAK

Paradigma hukum jinayah dalam tradisi Islam selama ini kerap dipahami secara retributif dan tekstual, sehingga menimbulkan ketegangan ketika dihadapkan dengan tuntutan keadilan sosial dan hak asasi manusia di era kontemporer. Penelitian ini bertujuan untuk merekonstruksi etika penal Islam melalui pendekatan restoratif yang lebih relevan dengan dinamika sosial modern, tanpa menanggalkan otentisitas syariat. Dengan menggunakan metode kualitatif berbasis studi pustaka kritis terhadap sumber-sumber primer fikih, *maqashid al-shari'ah*, serta literatur hukum kontemporer, penelitian ini menghasilkan tiga temuan utama: pertama, etika penal Islam secara normatif bersifat komprehensif dan dinamis, memungkinkan pendekatan restoratif melalui nilai *islah*, *'afw*, dan *rahmah*; kedua, rekonstruksi terhadap hukum *hudud*, *qishash*, dan

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ta'zir menunjukkan adanya ruang legal dan moral untuk penyelesaian non-retributif seperti mediasi, pemaafan, dan rehabilitasi; dan ketiga, penerapan model restoratif dapat mengintegrasikan nilai-nilai keadilan sosial Islam dengan prinsip HAM, dengan melibatkan masyarakat sipil dan merespons akar-akar struktural kejahatan seperti kemiskinan dan keterasingan sosial. Temuan ini menegaskan urgensi pembaruan hukum jinayah Islam yang lebih humanis, inklusif, dan transformatif dalam bingkai keadilan sosial kontemporer.

Kata Kunci : Paradigma Restorative; Etika; Pidana Islam; Keadilan Sosial

INTRODUCTION

Criminal law in Islamic tradition is a fundamental element of the Islamic legal system (sharia) that regulates criminal acts, legal responsibility, and the types of sanctions imposed on perpetrators of crimes.¹ In classical literature, this law is based on two main pillars, namely *qishash* (as a form of retribution commensurate with physical crimes such as murder or abuse) and *hudud* (a set of fixed punishments considered to be God's right for certain offences such as adultery, theft, or robbery).² These two principles are designed to maintain the moral and social order of the community and uphold the values of substantive justice as intended in Islamic normative texts. However, throughout its history of implementation, this approach has often been viewed as rigid, formalistic, and insufficiently accommodating of the complexity and dynamics of modern society, particularly in terms of victim protection, offender rehabilitation, and social reintegration.

As the discourse on law and justice has evolved in the contemporary era, criticism has arisen against the traditional paradigm of punishment, which is considered to place greater emphasis on retribution and judgement than on restoration and prevention. In this context, the restorative justice paradigm offers a more holistic and humanistic approach, emphasising the restoration of social relationships damaged by criminal acts.³ This approach not only considers the interests of victims and perpetrators but also involves the community in the conflict resolution process, in order to create sustainable social harmony. Although in terms of values, the principles of restorative justice are in line with the spirit of *maqāṣid al-syarī'ah*, particularly in preserving life (*ḥifẓ al-naḥs*), honour

¹ Syariful Alam, Nu'man Aunuh & Yaris Adhial Fajrin. (2024). The Concept of Restorative Justice in Islamic Criminal Law: Alternative Dispute Settlement Based on Justice. *KnE Social Sciences*, 9(1), 642–651. <https://doi.org/10.18502/kss.v8i21.14779>.

² Anwar Mayer Siregar. (2025). Restorative Justice Based on an Islamic Legal Perspective in Cases of Children as Criminal Offenders. *ELG: Journal Equity of Law and Governance*, 5(1), 156-161.

³ Arie Putra Prakoso, Fatimah Yunus, & Iwan Romadhan Sitorus. (2023). Restorative Justice Against Child Crime in the Perspective of Islamic Law at the Bengkulu City Police Station. *Qiyas: Jurnal Hukum Islam dan Peradilan*, 8(2), 142-150. <http://dx.doi.org/10.29300/qys.v8i2.2671>.

(*hifz al-'ird*), and social order, the integration of this paradigm into the framework of Islamic criminal law is still at an immature conceptual stage.⁴ The main challenge lies in how to ground the principles of restorative justice within the corridor of Islamic penal ethics without negating the normative aspects of revelation and the fixed provisions of sharia. Therefore, a critical reinterpretation and methodological construction is needed to bridge the gap between traditional criminal law values and the demands for a more transformative and inclusive social justice in the modern era.

Several previous studies have examined criminal law from the perspective of fiqh and jurisprudence, including studies by Joko Budi Darmawan, Fendy Suhariadi, Suparto Widjojo, Mia Amiati and Amjad Hamad Abdullah, which resulted in the integration of the principle of *islah* in the context of restorative justice, which is highly recommended to bridge contemporary legal practices and Islamic values, as well as contributing to the renewal of substantive criminal law in Indonesia through an approach based on Islamic values and social law.⁵ Research by Khairatun Hisan, Fauziah Wiranti Briliana and Selmarisa Wardhani, which emphasises the importance of restoring relationships between victims and perpetrators through a restorative approach.⁶ Meanwhile, the research by Andi B. Mutmainnah Sudarmin, Monika, Maman Supardi and Yusrial concludes that restorative justice solutions in Islamic law can improve social justice towards Indonesia Emas 2045 and the importance of the Islamic legal approach in realising sustainable and inclusive social justice.⁷ The strengths of these studies lie in their analysis of the technical aspects of law and its practical application in specific communities. However, the main gap found is the lack of studies that conceptually integrate the restorative paradigm with Islamic penal ethics, particularly in the context of reconstructing values and transposing social justice that is adaptive to changing times. This indicates the need for more

⁴ Hifdhotul Munawaroh. (2019). Restorative Justice in Settling Minor Criminal Disputes in Ponorogo, East Java: An Islamic Law Perspective. *Mazahib: Jurnal Pemikiran Hukum Islam*, 18(2), 167-200. <https://doi.org/10.21093/mj.v18i2.1632>.

⁵ Joko Budi Darmawan, Fendy Suhariadi, Suparto Widjojo, Mia Amiati & Amjad Hamad Abdullah. (2025). Incorporating Islah Principles into Restorative Justice: Bridging Contemporary Legal Practice and Islamic Values. *MILRev: Metro Islamic Law Review*, 4(1), 269-294. <https://doi.org/10.32332/milrev.v4i1.10435>.

⁶ Khairatun Hisan, Fauziah Wiranti Briliana & Selmarisa Wardhani. (2024). Penal Mediation in Resolving Domestic Violence Cases: Perspectives from Positive Law and Islamic Jurisprudence Towards Restoring Justice. *ALFIQH Islamic Law Review Journal*, 3(1), 1-25.

⁷ Andi B. Mutmainnah Sudarmin, Monika, Maman Supardi & Yusrial. (2023). Restorative Justice in Islamic Law: Solutions to Improve Social Justice Towards a Golden Indonesia 2045. *El-Rusyd*, 8(2), 97-104. <https://doi.org/10.58485/elrusyd.v8i2.203>.

comprehensive research in formulating a restorative paradigm as an ethical and legal solution in criminal law.

This study focuses on the legal ethics approach in reconstructing the Islamic penal paradigm by placing the restorative paradigm at the core of criminal law reconstruction. The objectives of this study are: first, to critically examine the concepts and values of ethics in traditional criminal law. Second, to reformulate the restorative paradigm within the framework of Islamic penal ethics. Third, to construct a model of contemporary social justice transposition that is capable of responding to the challenges of modern society through a restorative criminal law approach.

This study presents a conceptual innovation in the form of a reconstruction of the restorative paradigm, which is not merely an alternative punishment mechanism, but rather an Islamic penal ethic rooted in contemporary social justice values. Thus, this study offers an integrative model that combines the tradition of *jinayah* law with a humanistic and contextual restorative approach. The significance of this research lies in its contribution to enriching contemporary Islamic legal literature, while providing a strong philosophical and ethical basis for the renewal of Islamic criminal law that is more responsive and socially just in the current global context.

RESEARCH METHOD

This research is a type of normative legal research with a legal ethics approach, which focuses its analysis on the philosophical, normative, and moral values dimensions in the Islamic legal system. This approach is used to reconstruct the basic values in criminal law and to examine the possibility of transposing the restorative justice paradigm into the framework of Islamic penal ethics in a contextual manner. The legal sources consist of primary legal materials such as the Qur'an, hadith, and classical and contemporary fiqh books, as well as secondary legal materials in the form of scientific literature relevant to Islamic law, justice theory, and restorative justice. The analysis of legal materials is carried out qualitatively through normative interpretation and hermeneutic approaches,⁸ in order to explore the substantive meaning of criminal law principles and assess their relevance in the context of modern social justice.

⁸ M. Nur Syafiuddin, Rachmad Safa'at, Prija Djatmika & Istislam. (2021). Understanding Child Support in the Pattern of Child Protection based on the Principle of Child Protection. *International Journal of Multicultural and Multireligious Understanding*, 8(1), 92-99. <http://dx.doi.org/10.18415/ijmmu.v8i1.2260>.

RESULT AND DISCUSSION

Legal Ethics Approach: Reorienting the Spirit of Islamic Criminal Law

Criminal law in Islamic tradition has often been associated with a retributive punishment system, as reflected in the implementation of *hudūd*, *qisās*, and *ta'zīr*.⁹ This approach, despite having a normative foundation in Sharia texts, is often considered insufficiently adaptive to the complexities of contemporary society, which prioritises human rights, social justice, and community participation in the legal process. Within this framework, a paradigmatic crisis has emerged between the classical Islamic penal system and the demands of modern social justice. The classical *fiqh* approach has experienced stagnation because it focuses more on legal form than on the essential objectives of law (*maqāṣid al-sharī'ah*), such as justice, public interest, and the protection of human dignity.¹⁰

Penal ethics in Islam is not only oriented towards retribution or punishment, but also reflects a comprehensive approach to justice, which includes moral, social and spiritual aspects. These principles make Islamic penal ethics comprehensive because it does not solely focus on the perpetrator of the crime, but also considers the victim, society, and the social relationships that have been disrupted as a result of the crime.¹¹ In this context, the restorative approach is compatible with the basic structure of *jinayah* law because both emphasise the importance of social reform and reconciliation.

The dynamics in Islamic penal ethics can be seen from the flexibility of legal instruments such as *diyat* (compensation), *qisas* (retaliation), and *ta'zir* (judicial discretion). All three provide room for fair case resolution without always relying on physical punishment or imprisonment.¹² This approach is dynamic because it can be adapted to the social context and needs of contemporary society, as long as it does not conflict with *maqāṣid al-sharī'ah* (the objectives of Islamic law). This opens up great opportunities for the reconstruction of a

⁹ Hajed A. Alotaibi. (2021). The Challenges of Execution of Islamic Criminal Law in Developing Muslim Countries: An Analysis Based on Islamic Principles and Existing Legal System. *Cogent Social Sciences*, 7(1). <https://doi.org/10.1080/23311886.2021.1925413>.

¹⁰ Syaza Shukri & Meor Alif Meor Azalan. (2023). The Application of Maqāṣid al-Sharī'ah in Multicultural Malaysia: Developing Strong Institutions for Interethnic Unity. *Contemporary Islam*, 17(3), 433-450. <https://doi.org/10.1007/s11562-023-00528-7>.

¹¹ Tawffeek A S Mohammed. (2024). A Scientometric Study of Maqāṣid al-Shariah Research: Trending Issues, Hotspot Research, and Co-Citation Analysis. *Frontiers Research Metrics and Analysis*, 27(9), <https://doi.org/10.3389/frma.2024.1439407>.

¹² Md. Jahirul Islam, Masahiro Suzuki, & Nurunnahar Mazumder. (2024). Promoting Access to Justice in Bangladesh: Towards a Hybrid justice Model. *International Journal of Law, Crime and Justice*, 77. <https://doi.org/10.1016/j.ijlcrj.2024.100655>.

restorative approach within the framework of criminal law, which was previously understood in a rigid and retributive manner.¹³ In the modern framework, the restorative approach that prioritises dialogue, victim participation, and social recovery actually has historical and normative roots in Islamic tradition.¹⁴ Therefore, the restorative paradigm is not the antithesis of criminal law, but rather the actualisation of the true ethical values of Islamic penal law.

The concept of reconciliation (peace) occupies a central position in conflict resolution in Islam. The Qur'an encourages people to seek reconciliation as the primary course of action before resorting to punishment. In the context of criminal law, reconciliation is a form of mediation that allows cases to be resolved through agreement between the perpetrator and the victim or their family.¹⁵ This is very much in line with modern restorative principles, which emphasise the repair of social relationships rather than simply imposing punishment.

In addition, the value of 'afw (forgiveness) is also commanded in the Qur'an as a form of forgiveness that is highly valued by Allah. Forgiveness not only ends resentment but also creates spiritual space for the perpetrator to change and for the victim to recover emotionally. In jinayah law, forgiveness by the victim can stop legal proceedings in qisas cases, affirming that forgiveness is a right that is respected and empowered in the Islamic legal system.

The value of rahmah (compassion) is the spiritual basis of all Islamic law. A legal approach that emphasises rahmah makes it easier to apply the principle of human justice, including for offenders who show remorse and intent to repent.¹⁶ This approach does not eliminate the legal aspect of breaking the law, but combines it with social and spiritual justice. The following table illustrates the relationship between these values and modern restorative principles:

¹³ Marlina, & Mahmud Mulyadi. (2024). Building restorative justice in Gampong as a bottom-up legitimisation of the protection of children in conflict with the law in Indonesia: case study in Aceh. *Cogent Social Sciences*, 10(1). <https://doi.org/10.1080/23311886.2024.2347410>.

¹⁴ Syaza Shukri & Meor Alif Meor Azalan. (2023). The Application of Maqāsid al-Shari'ah in Multicultural Malaysia: Developing Strong Institutions for Interethnic Unity. *Contemporary Islam*, 17(3), 433-450. <https://doi.org/10.1007/s11562-023-00528-7>.

¹⁵ Nur Azisa, Audyna Mayasari, Aris Munandar, Muhammad Mutawalli Mukhlis & Aspalella A. Rahman. (2025). Psychological Recovery of Crime Victims within Contemporary Restorative Justice: An Islamic Legal Perspective. *MILRev: Metro Islamic Law Review*, 4(2), 1098-1127. <https://doi.org/10.32332/milrev.v4i2.11184>.

¹⁶ Tarmizi Tahir & Syekh Hasan Abdel Hamid. (2024). Maqasid Al-Syari'ah Transformation in Law Implementation for Humanity. *International Journal Ihya' 'Ulum al-Din*, 26(1), 119-131. <https://doi.org/10.21580/ihya.26.1.20248>.

Table 1.
The Connection Between Islamic Values and Restorative Principles

Islamic Value	Meaning of Sharia	Principles of Modern Restorative Justice
<i>Islah</i>	Reconciliation & social peace	Mediation & conflict resolution
<i>Afw</i>	Forgiveness from victims	Victim-offender dialogue
<i>Rahmah</i>	Compassion in law enforcement	Humanisation of perpetrators and rehabilitation

Source: compiled from various legal sources

The legal ethics approach requires the integration of legal norms with moral and spiritual values. In Islam, norms are not only to be obeyed textually, but must also bring about substantial benefits and justice.¹⁷ Therefore, the application of criminal law requires a reorientation from a punishment-oriented system to a justice-oriented one that focuses on restoration and social balance.¹⁸

This paradigm shift reflects a shift from the logic of retribution to the logic of restoration. Islamic legal ethics supports this change because it has both transcendental and social dimensions. The law is not only a means of deterring criminals, but also a path to *tazkiyah* (self-purification), both for the perpetrator and the community.¹⁹ This is where the restorative approach is not only a technical alternative, but a manifestation of *maqashid al-syariah* itself.

The integration of legal and moral-spiritual norms can be realised through legislative and judicial policies that are more inclusive of the values of reconciliation and forgiveness.²⁰ Community-based mediation institutions, strengthening the role of religious scholars and community leaders in conflict resolution, and the direct involvement of victims and perpetrators in the legal process are important elements of this paradigm. The Islamic legal ethics approach paves the way for a more just, transformative, and humane criminal justice system.

¹⁷ Ramizah Wan Muhammad. (2020). Forgiveness and Restorative Justice in Islam and the West: A Comparative Analysis. *ICR Journal*, 11(2), 277-297. <https://doi.org/10.52282/icr.v11i2.786>.

¹⁸ Absar Aftab Absar, Restorative Justice in Islam with Special Reference to the Concept of Diyya, *Journal of Victimology and Victim Justice*, 3(1), <https://doi.org/10.1177/2516606920927277>.

¹⁹ Husamah, Abdulkadir Rahardjanto, Tutut Indria Permana & Nurdiyah Lestari (2025). Islam and Sustainability Issues, How Far Has the Relationship Progressed? A Bibliometric Analysis. *Social Sciences & Humanities Open*, 12, <https://doi.org/10.1016/j.ssaho.2025.101703>.

²⁰ Rasidin & Handoko Jafar. (2019). Philological Analysis on Normative Historical Practical Term Rahmah in Qur'an. *Abjadiah International Journal of Education*, 3(1), <https://doi.org/10.18860/abj.v3i1.5915>.

Value Reconstruction: From Retribution to Restoration

Although *hudud* and *qishash* laws in Islam are *qat'i* (definitive) in their texts, this does not mean that their implementation cannot accommodate a restorative approach. In the historical practice and jurisprudence of Islam, there is room for interpretation (*ijtihad*) in the procedural and technical aspects of applying these two types of punishment, especially when it involves the role of the victim, family, and community.²¹ For example, in the case of *qishash*, the Qur'an explicitly opens up the possibility of forgiveness by the victim's family in exchange for compensation (*diyat*) as a form of legal peaceful settlement.²²

This approach actually incorporates elements of restorative justice, such as victim participation in determining the form of justice, providing space for reconciliation, and restoring social relations damaged by criminal acts. In a contemporary framework, this can be further developed through the institutionalisation of community-based criminal mediation that places reconciliation as the main objective in handling serious criminal cases.²³ This concept does not eliminate sanctions, but emphasises proportionality, voluntariness, and restoration.

Hudud itself, although in theory it is a legal limit set by Allah and cannot be changed, in practice is often not carried out literally due to very strict proof requirements.²⁴ Scholars such as Imam Malik and Imam Abu Hanifah emphasise the importance of *dar' al-hudud bi al-syubuhah* (avoiding the application of hudud when there is doubt), which shows that this system contains the principles of caution and protection of human rights.²⁵ Restorative application can arise through preventive and rehabilitative mechanisms before the application of hudud punishment itself.

²¹ Steve Kirkwood. (2022). A Practice Framework for Restorative Justice. *Aggression and Violent Behavior*, 63, <https://doi.org/10.1016/j.avb.2021.101688>.

²² Absar Aftab Absar. (2020). Restorative Justice in Islam with Special Reference to the Concept of *Diyaa*. *Journal of Victimology and Victim Justice*, 3(1), 38-56. <https://doi.org/10.1177/2516606920927277>.

²³ Dede Kania, Vienka Rahmannillah & Litya Surisdani Anggarainiko. (2024). The Application of Penal Mediation to Domestic Violence Case: An Islamic Law Perspective. *Litigasi*, 25(2), 172-187. <https://dx.doi.org/10.23969/litigasi.v25i2.13320>.

²⁴ Bahman Khodadadi. (2024). Prescribed Punishment (*hadd*) in Islamic Jurisprudence and the Islamic Penal Code. *On Theocratic Criminal Law: The Rule of Religion and Punishment in Iran*, Oxford Academic, 95-152. <https://doi.org/10.1093/9780191995088.003.0004>.

²⁵ Sadia Tabassum, Bakht Munir, & Omar Mahmood Wattoo. Exploring Islamic Injunctions on Remission of Sentences. *Global Legal Studies Review*, V(IV), 1-9. [https://dx.doi.org/10.31703/glsr.2020\(V-IV\).01](https://dx.doi.org/10.31703/glsr.2020(V-IV).01).

At least the reconstruction of values in this case to realise the value of retribution to restoration is: first, *ta'zir*. An adaptive space for contextual restorative justice. Unlike *hudud* and *qishash*, *ta'zir* law is flexible and entirely within the authority of judges or state authorities.²⁶ Because it is not explicitly specified in the Qur'an or hadith, *ta'zir* provides a great opportunity to adopt a model of justice that is more contextual, participatory, and adaptive to social dynamics.²⁷ In this context, restorative justice values such as rehabilitation, social reintegration, and reconciliation can be used as a basis for designing a more humanistic and solution-oriented *ta'zir* system.

For example, in cases of minor social deviance such as defamation, minor abuse, or juvenile crime, the *ta'zir* approach can be applied through victim-offender dialogue, social work, and community-based rehabilitation programmes.²⁸ This is in line with the very purpose of *ta'zir*, which is to reform the perpetrator and prevent the recurrence of the act without resorting to physical punishment that degrades human dignity. Thus, this approach bridges the principles of Sharia with the needs of contemporary justice.

Even some countries that apply Islamic legal principles have begun to implement alternative models of criminal justice based on restorative justice in the realm of *ta'zir*, such as diversion programmes for juvenile offenders in Jordan²⁹ and Malaysia.³⁰ These programmes focus on acknowledgement of wrongdoing, mediation between victims and perpetrators, and community-based social supervision. This demonstrates that the *ta'zir* system has great potential to become a space for reforming the Islamic penal system towards one that is more just and responsive.

²⁶ Mukhtor Akramov. (2024). Ta'dhir in Islamic Law: Types of Crimes and Punishments. *Jurnal ISO Jurnal Ilmu Sosial Politik dan Humaniora*, 4(2), 1-7. <https://doi.org/10.53697/iso.v4i2.1861>.

²⁷ Suud Sarim Karimullah. (2023). Prison System Transformation: Delving into Restorative Justice, Rehabilitation, and Religious Life Based on Islamic Law. *Fitrah: Jurnal Kajian Ilmu-ilmu Keislaman*, 9(2), 201-224. <https://10.24952/fitrah.v9i2.8804>.

²⁸ Yudhi Permana, Watni Marpaung & Arifuddin Muda Harahap. (2025). The Role of Restorative Justice in Juvenile Criminal Law Islamic Law Analysis. *Jurnal Akta*, 12(1). <http://dx.doi.org/10.30659/akta.v12i1.43730>.

²⁹ Latefa Ali Dardas, Naheel Qaddoura, Amjat Al-Khayat, Bayan Abdulhaq, Mu'taman Jarrar, Mohammad Alkhayat, & Ibrahim Aqeel. (2025). The Mental Health Needs of Youth Involved in the Juvenile Justice System in Jordan. *Health Justice*, 13(12). <https://doi.org/10.1186/s40352-024-00310-8>.

³⁰ Nadzriah Ahmad, Maria Silvya E. Wangga, Shella A. P. Krishnan Jayabalan, Normawati Hashim, Ermania Wijajanti & Wahyuni Retno Wulandari. (2025). Diversion for Children from the Criminal Justice System: A Comparative Study of Malaysia and Indonesia. *Journal of International Studies*, 21(2), 1-21. <https://doi.org/10.32890/jis2025.21.2.1>.

Second, *maslahah* and *'adl*. The ethical-systemic foundation for the design of a humanistic Islamic penal system. The concepts of *maslahah* (public interest) and *'adl* (justice) are two fundamental values in Islamic legal ethics that guide every formulation of law towards protecting life, honour, property, and humanity as a whole.³¹ In the context of Islamic criminal law, these two values play an important role as a philosophical foundation in reconstructing the penal system so that it does not stop at textual-formal aspects, but also pays attention to the social context and human needs.³²

The principle of *maslahah* requires that the law must bring benefits and avoid harm, including in the handling of crimes. Similarly, the value of *'adl* in Islam is not merely legal equality, but includes balance, proportionality, and restoration of losses.³³ An approach that emphasises punishment alone often fails to fulfil the principle of *'adl*, as it ignores the moral and social dimensions of the perpetrator and the victim. Therefore, the design of the future Islamic penal system must lead to a more rehabilitative model, viewing the perpetrator as a person who can change and the victim as a party who needs to be restored.³⁴

The values of *maslahah* and *'adl* also support the importance of an inclusive penal system, one that does not marginalise vulnerable groups such as women, children and minorities. In the context of restorative justice, inclusivity is an important condition for ensuring that justice is not only procedural but also substantive.³⁵ The following chart illustrates the relationship between the three fundamental values of Islam and contemporary restorative justice principles:

³¹ Ameen Ahmed Abdullah Qasem Al-Nahari, Abu Talib Mohammad Monawer, Luqman Bin Haji Abdullah, Abdul Karim Bin Ali, Noor Naemah Binti Abdul Rahman & Meguellati Achour. (2022). Common Conceptual Flaws in Realizing *Maqāṣid al-Sharī'ah* Vis-à-Vis Islamic Finance". *ISRA International Journal of Islamic Finance*, 14(2), 190–205, <https://doi.org/10.1108/IJIF-12-2020-0259>.

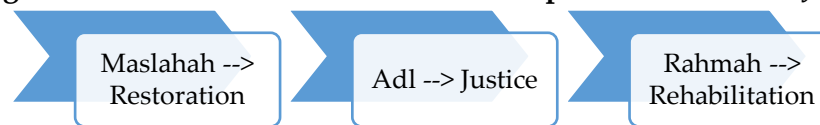
³² Tawfifeek A S Mohammed. (2024) A Scientometric Study of *Maqasid al-Shariah* Research: Trending Issues, Hotspot Research, and Co-Citation Analysis. *Frontiers Research Metrics and Analysis*, 27(9), <https://doi.org/10.3389/frma.2024.1439407>.

³³ Sung Joon Jang & Byron R. Johnson. (2022). Religion and Rehabilitation as Moral Reform: Conceptualization and Preliminary Evidence. *Am J Crim Justice*, 14, 1-27. <https://doi.org/10.1007/s12103-022-09707-3>.

³⁴ Suud Sarim Karimullah. (2023). Prison System Transformation: Delving into Restorative Justice, Rehabilitation, and Religious Life Based on Islamic Law. *Fitrah: Jurnal Kajian Ilmu-ilmu Keislaman*, 9(2), 201-224. <https://10.24952/fitrah.v9i2.8804>.

³⁵ Mary Bunn, Enryka Christopher, Chloe Polutnik-Smith, John McCoy, Rosie Hanneke, Michael King, B Heidi Ellis, Emma Cardeli, & Stevan Weine. (2024). Rehabilitation and Reintegration of Women and Children Returning from Violent Extremist Contexts: A Rapid Review to Inform Program and Policy Development. *Terror Political Violence*, 36(4), 455-487. <https://doi.org/10.1080/09546553.2023.2169143>.

Chart 1.
Integration of Islamic Values with the Principles of Restorative Justice



Source: compiled from various legal sources

The chart above shows a framework for integrating fundamental values in Islam with the main principles of restorative justice. This integration is based on the understanding that the objectives of Islamic law (*maqasid syariah*) are very much in line with the focus of restorative justice, which is oriented towards problem solving, relationship repair, and the prevention of future crimes, rather than focusing solely on punishment.³⁶ The value of *maslahah* (public interest) is closely linked to the principle of restoration, where the main objective is to achieve the greatest benefit for all parties - victims, perpetrators and society - by restoring conditions to what they were before the crime occurred or by repairing the damage caused.³⁷

The value of '*adl* (justice) in Islam, which demands that everything be placed in its proper place, is integrated with the principle of justice itself in a restorative context. Justice here does not only mean giving retributive punishment, but also giving a voice to victims, making perpetrators directly responsible for the harm caused, and reaching an agreement for a fair resolution for all parties.³⁸ Finally, the values of *rahmah* (compassion) and mercy are the spiritual basis underlying the principle of rehabilitation. *Rahmah* encourages efforts to return perpetrators to the right path, provide opportunities for repentance and self-improvement, and ensure that they can return to being productive members of society.³⁹ This overall integration results in a holistic, comprehensive, and humane model of justice.

³⁶ Suud Sarim Karimullah. (2023). Prison System Transformation: Delving into Restorative Justice, Rehabilitation, and Religious Life Based on Islamic Law. *Fitrah: Jurnal Kajian Ilmu-ilmu Keislaman*, 9(2), 201-224. <https://10.24952/fitrah.v9i2.8804>.

³⁷ Toha Andiko, Zurifah Nurdin & Efrinaldi. (2024). Implementation of Restorative Justice in a Customary Court in Rejang Lebong District, Bengkulu, Indonesia: A Maqāṣid Al-Sharī'ah Review. *Juris: Jurnal Ilmu Syariah*, 23(1), 93-106. <https://doi.org/10.31958/juris.v23i1.12008>.

³⁸ Suparno, Rusli & Ia Hidarya. (2024). A New Restorative Justice Paradigm in the Sociology of Islamic Law in Indonesia: Nahdlatul Ulama and Muhammadiyah's Responses to Corruption Cases. *Syariah: Jurnal Hukum dan Pemikiran*, 24(2), 480-502. <https://doi.org/10.18592/sjhp.v24i2.16221>.

³⁹ Irwan Waris, Ani Susanti, Dandan Haryono, Bayu Rahmat Ramadhan, & Sri Nur Akifa. (2025). Reframing Public Policy on Narcotic Case Dismissals: Integrating Maqasid al-Shari'ah and Restorative Justice in the Contemporary Era. *MILRev*, 4(1), 566-596. <https://doi.org/10.32332/milrev.v4i1.10579>.

The Transposition of Social Justice in the Contemporary Context

In the context of modern Muslim countries, the implementation of restorative justice can serve as a conceptual and practical bridge between Islamic law and human rights principles. Restorative justice not only offers a more humane model of criminal justice, but is also compatible with Islamic values such as *islah* (reconciliation), *rahmah* (compassion), and *'adl* (justice).⁴⁰ The integration of this model should not be seen as a threat to the authenticity of Sharia law, but rather as a reinterpretation of its fundamental values in a contemporary context.

Many Muslim countries are under pressure to balance compliance with international human rights standards and preservation of Islamic law. In this situation, restorative justice provides a strategic alternative to fulfil both. For example, mechanisms such as criminal mediation, victim compensation, and community-based resolutions can be implemented within the framework of Islamic law without violating the basic principles of Sharia. Countries such as Indonesia, Jordan, and Morocco have begun to adopt this approach in their national legal systems.⁴¹

The restorative approach allows for institutional *ijtihad* in Islamic criminal law, where legal interpretations are adapted to social needs and universal principles that are also recognised in *maqashid al-shari'ah*. This confirms that Islam is not opposed to human rights values, as long as their interpretation does not conflict with the essence of tawhid and justice.⁴² Through this, the reconstruction of criminal law based on restoration is not only a pragmatic solution, but also a form of *tajdid* (legal renewal) that is in line with the spirit of the times.

Table 2.
Comparison of Conventional and Restorative Penal Approaches

Aspect	Conventional Penal	Restorative Justice
Main actors	State (judges,	Community, victims, perpetrators

⁴⁰ Irwan Waris, Ani Susanti, Dandan Haryono, Bayu Rahmat Ramadhan, & Sri Nur Akifa. (2025). Reframing Public Policy on Narcotic Case Dismissals: Integrating Maqasid al-Shari'ah and Restorative Justice in the Contemporary Era. *MILRev*, 4(1), 566-596. <https://doi.org/10.32332/milrev.v4i1.10579>.

⁴¹ Ariefulloh, Hibnu Nugroho, Angkasa & Riris Ardhanariswari. (2023). Restorative Justice-Based Criminal Case Resolution in Salatiga, Indonesia: Islamic Law Perspective and Legal Objectives. *IJTIHAD Jurnal Wacana Hukum Islam dan Kemanusiaan* 23(1), 19-36. <https://doi.org/10.18326/ijtihead.v23i1.19-36>.

⁴² Tawffeeek A S Mohammed. (2024) A Scientometric Study of Maqasid al-Shariah Research: Trending Issues, Hotspot Research, and Co-Citation Analysis. *Frontiers Research Metrics and Analysis*, 27(9), <https://doi.org/10.3389/frma.2024.1439407>.

	prosecutors)	and facilitators
Main objective	Punishment (retribution)	Restoration and reconciliation
Position of victims	Passive	Active, directly involved
Process	Formal, procedural	Dialogic, participatory
Social effects	Stigma, alienation	Reintegration, social transformation

Source: compiled from various legal sources

One of the main characteristics of restorative justice is the active involvement of the community in the process of resolving criminal cases. In the context of Islam, this has strong roots in the traditions of deliberation and *hisbah* (social supervision).⁴³ Thus, the involvement of civil society represents a shift from state domination to social participation. Restorative justice opens up a large space for the involvement of civil society, families, and religious leaders as agents of mediation and social recovery. Thus, state domination in a penal system that tends to be bureaucratic and repressive can be reduced.

The involvement of religious leaders and local communities can increase the legitimacy of the legal process and strengthen moral values in conflict resolution. In addition, these social actors can serve as an emotional bridge between victims and perpetrators, accelerating the process of psychological and social recovery.⁴⁴ Practices such as *sulh* (peace) and *tahkim* (arbitration), which already exist in Muslim traditions, can also be strengthened through the framework of modern restorative justice.

The paradigm shift from a state-centred system to community-based justice does not mean eliminating the role of the state, but rather balancing legal authority with social legitimacy. In many cases, restorative programmes are more successful when communities are empowered to be part of the case resolution process. This leads to a more personal, relational and transformative form of justice.⁴⁵

In response to the structural roots of crime, a systemic and inclusive approach is needed. The restorative justice model also offers a more systemic approach to the causes of crime. Rather than viewing crime as solely an individual problem, this model seeks to address structural roots such as poverty,

⁴³ Syariful Alam, Nu'man Aunuh, & Yaris Adrian Fajrin. (2024). The Concept of Restorative Justice in Islamic Criminal Law: Alternative Dispute Settlement Based on Justice. *KnE Social Sciences*, 9(1), 642–651. <https://doi.org/10.18502/kss.v8i21.14779>.

⁴⁴ Ahmer Bilal Soofi & Muhammad Masud. (2024). International Law and Maqasid Al-Shariah. *SSRN*, <http://dx.doi.org/10.2139/ssrn.4937103>.

⁴⁵ Jonathan Hobson, Anamika Twyman-Ghoshal, Rebecca Banwell-Moore, Daniel P. Ash. (2022) Restorative Justice, Youth Violence, and Policing: A Review of the Evidence. *Laws*, 11(62). <https://doi.org/10.3390/laws11040062>.

discrimination, inequality, and social alienation.⁴⁶ In the context of Muslim countries that face many acute social problems, this approach is highly relevant and urgent to implement.

Restorative justice shifts the focus from punishment to addressing the social conditions that give rise to crime. For example, perpetrators of economic crimes from poor communities are better served by economic rehabilitation programmes than prison sentences, which only exacerbate marginalisation. Similarly, in cases involving children or adolescents who have committed offences, causes such as domestic violence, dropping out of school, and social isolation should be key considerations in determining sanctions.⁴⁷

This approach promotes inclusivity in access to justice. Many vulnerable groups, such as women, minorities, and indigenous peoples, who are often marginalised in the formal justice system, can be more meaningfully involved in restorative mechanisms.⁴⁸ This is in line with the Islamic principle of *al-'adl wa al-ihsan* (justice and benevolence), which emphasises the importance of equality and recognition of social diversity.

CONCLUSION

This study demonstrates a novelty in the reorientation of criminal law ethics from a retributive approach to a restorative approach based on Islamic values such as *islah*, *'afw*, and *rahmah*. These findings prove that Islamic penal ethics are dynamic and comprehensive, allowing for the integration of a restorative approach without denying the normative authority of sharia. This novelty confirms that Islamic values can serve as a philosophical framework that is in harmony with contemporary principles of social justice. The second novelty lies in the reconstruction of *jinayah* legal values, particularly in the approach to *hudud*, *qishash*, and *ta'zir*, which have been understood rigidly. This study finds that in fixed (*qat'i*) laws, such as *qishash*, there is room for restoration through forgiveness, mediation, and compensation (*diyat*). Meanwhile, *ta'zir* structurally opens up space for the development of a more contextual model of

⁴⁶ Thalia González. (2023). Restorative Justice Div e Justice Diversion as a Structur Ersion as a Structural Health Inter al Health Intervention in Ention in the Criminal Legal System. *The Journal of Criminal Law & Criminology*, 113(3), 541-593.

⁴⁷ Jeffrey M Pavlacic, Karen Kate Kellum, & Stefan E Schulenberg. (2021). Advocating for the Use of Restorative Justice Practices: Examining the Overlap between Restorative Justice and Behavior Analysis. *Behav Anal Pract*, 15(4), 1237-1246. <https://doi.org/10.1007/s40617-021-00632-1>.

⁴⁸ Syariful Alam, Nu'man Aunuh, & Yaris Adrian Fajrin. (2024). The Concept of Restorative Justice in Islamic Criminal Law: Alternative Dispute Settlement Based on Justice. *KnE Social Sciences*, 9(1), 642-651. <https://doi.org/10.18502/kss.v8i21.14779>.

justice that is responsive to the needs of the times. This is a conceptual renewal of the classical paradigm of *fiqh jinayah*. The third innovation is the transposition of Islamic social justice values into the context of modern Muslim countries, where restorative justice is positioned as a bridge between the principles of sharia and human rights. By opening up space for the participation of civil society, religious leaders, and families, this approach shifts the dominance of the state in the penal system to become more collective, inclusive, and transformative. This model is considered more effective in addressing the structural roots of crime, such as poverty and social alienation, while creating a humanistic and rehabilitative Islamic legal system.

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